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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED SAFEGUARD)	2:15-CV-03998 RSWL (AJW)
DISTRIBUTORS ASSOCIATION,)	
INC., a Georgia)	
corporation; GREG SCHOB, an)	ORDER re: UNITED
individual; VICKI SCHOB, an)	SAFEGUARD DISTRIBUTORS
individual; and SCHOB AND)	ASSOCIATION, INC.'S
SCHOB, INC., a California)	MOTION FOR
corporation,)	RECONSIDERATION OF THE
)	COURT'S NOVEMBER 17,
)	2015 ORDER [49]
Plaintiffs,)	
)	
v.)	
)	
)	
SAFEGUARD BUSINESS SYSTEMS,)	
INC., a Delaware)	
corporation; SAFEGUARD)	
ACQUISITIONS, INC., a)	
Delaware corporation;)	
DELUXE CORPORATION, a)	
Minnesota corporation; and)	
DOES 1-10,)	
)	
Defendants.)	

Currently before the Court is Plaintiff United Safeguard Distributors Association, Inc.'s ("Plaintiff" or "USDA") Motion for Reconsideration of the Court's November 17, 2015 Order ("Motion") [49]. Plaintiff

1 seeks reconsideration of this Court's November 17, 2015
2 Order (hereinafter "November 17 Order") [41] pursuant
3 to Federal Rules of Civil Procedure Rule 60(a), 60(b),
4 and Local Rule 7-18.

5 Plaintiff is correct in arguing that this Court's
6 previous Order dismissing Plaintiff's declaratory
7 judgment claim was erroneously predicated on the
8 misunderstanding that Plaintiff joined with the
9 remaining Plaintiffs in a breach of contract claim in
10 their First Amended Complaint. However, for reasons
11 discussed below, the Court **DENIES** Plaintiff's Motion
12 for Reconsideration [49].

13 I. BACKGROUND

14 A. Factual Background

15 1. The Parties

16 Plaintiff USDA is incorporated in Georgia and has
17 an office in La Mirada, California. FAC ¶ 27. USDA is
18 a membership organization composed of Safeguard
19 franchises and distributors, founded in April 1997.

20 FAC ¶ 27. Plaintiff Schob & Schob, Inc. is
21 incorporated in California with its principal office in
22 Fresno, California. Id. at ¶ 29. Plaintiffs Vicki and
23 Greg Schob are individuals residing in or near Fresno,
24 California. Id. at ¶¶ 30-31.

25 Defendant SBS is a Delaware corporation with its
26 principal place of business in Dallas, Texas. Id. at ¶
27 32. Defendant SAI is a Delaware corporation with its
28 principal place of business in Dallas, Texas. Id. at ¶

1 33. Defendant Deluxe is a Minnesota corporation with
2 its principal place of business in Shoreview,
3 Minnesota. Id. at ¶ 34. Deluxe, SBS, and SAI are
4 sellers of Safeguard products, including business forms
5 and systems, apparel, and other business services to
6 small businesses. Id. at ¶ 1. Deluxe acquired SBS in
7 2004. Id. at ¶ 6. SAI is a wholly-owned subsidiary of
8 Deluxe. Id. at ¶ 12.

9 2. The SBS Distributor Agreements

10 Since 1972, various distributors ("SBS
11 Distributors") such as the Schobs have engaged in the
12 sale of Safeguard products and thereby entered into SBS
13 Distributor Agreements with SBS. Id. at ¶ 2. The SBS
14 Distributor Agreements are uniform with respect to
15 many, but not all, of their provisions. Id. The
16 material provisions of the SBS Distributor Agreements
17 that are uniform throughout are those provisions that
18 grant the SBS Distributors protection against
19 competition for sales of Safeguard products to prior
20 customers by "(1) Safeguard itself, (2) all Safeguard
21 Distributors and franchisees, and (3) any other third
22 party engaged in the offer and sale of Safeguard
23 products." Id. at ¶ 3. Specifically, pursuant to the
24 SBS Distributor Agreements, SBS Distributors are
25 granted thirty-six months of exclusive rights to all
26 commissions from customers they solicit. Id.
27 Additionally, when an SBS Distributor solicits a
28 subsequent order from that customer, the Distributor

1 has an additional thirty-six months of exclusive rights
2 to commissions from that customer. Id. Further, SBS
3 Distributors have the "unqualified right" to
4 participate in commissions generated through sales to
5 that customer for up to five years after the
6 termination of their contracts with SBS - whether they
7 have been terminated with or without cause. Id. at ¶
8 4. These rights (referred to by Plaintiffs throughout
9 their First Amended Complaint and their Opposition to
10 Defendants' Motion to Dismiss as "Customer Protection")
11 apply to all of the SBS Distributors' customers for
12 Safeguard products ("the Protected Customers"). Id.

13 Prior to Deluxe's acquisition of SBS, SBS
14 Distributors took part in the "Sourced Products
15 Program," in which SBS Distributors placed wholesale
16 purchase orders for Safeguard products with vendors
17 approved by SBS ("Approved Vendors") to supplement the
18 Distributors' Safeguard product offerings to customers.
19 Id. at ¶¶ 55-56. In 1997, SBS implemented the Billing
20 Only Distributor Paid ("BODP") Program so that SBS
21 Distributors would pay Approved Vendors directly,
22 instead of SBS paying them. Id. at ¶¶ 61-62. In 2008,
23 Deluxe, having acquired SBS, launched its Business
24 Acquisitions and Mergers ("BAM") Program. Id. at ¶ 12.
25 Under the BAM Program, Deluxe acquires independent non-
26 SBS distributor businesses in the small business forms,
27 supplies, and services product market. Id. at ¶ 13.
28 The BAM program is "designed to maximize Deluxe

1 insourcing (the percentage of products sold or
2 manufactured by Deluxe), [and thereby] increase the
3 amount of revenue Deluxe obtains from rebates and
4 cross-sell[ing] Deluxe products to new customers, who
5 used to buy from Deluxe's competitors. The BAM Program
6 is also designed to expand Deluxe's range of products."
7 Id.

8 3. Plaintiffs' Allegations in their FAC

9 a. *USDA's Standing*

10 Plaintiffs allege that USDA has standing to
11 maintain this action because its members have suffered
12 injury-in-fact by conduct of each of the Defendants.
13 FAC ¶ 41. USDA asserts that neither its claim nor
14 request for relief requires the participation of USDA's
15 individual members. FAC ¶ 44.

16 b. *Plaintiffs' Declaratory Judgment Claim*
17 *against all Defendants*

18 In their First Amended Complaint, Plaintiffs seek a
19 declaratory judgment against all Defendants, while the
20 remaining ten claims are brought specifically by the
21 Schobs against various Defendants. Id. at ¶¶ 253-261.

22 Plaintiffs allege that Defendants implemented a
23 "scheme" to drive SBS Distributors out of business by
24 effectively eliminating Defendants' competition for the
25 sale of Safeguard products. Id. at ¶¶ 1, 107.

26 Plaintiffs allege that Deluxe increased fees,
27 threatened SBS Distributors, and implemented policies
28 designed to reduce SBS Distributors' sales commissions.

1 Id. at ¶¶ 9-11, 72, 77, 91, 95, 101, 105-106, 110, 115.
2 Plaintiffs allege that Deluxe forced SBS Distributors
3 to implement a "percentage schedule" for the BODP
4 Program which tripled fees for products sourced from
5 Approved Vendors other than Deluxe, effectively
6 discouraging SBS Distributors from using Approved
7 Vendors. Id. at ¶¶ 6, 9. Plaintiffs allege that the
8 increased fees are designed to encourage SBS
9 Distributors to source products from Deluxe, or where
10 Deluxe doesn't manufacture the product, to source from
11 what Deluxe and SBS characterize as "Preferred
12 Supplies" or "Preferred Vendors." Id. Plaintiffs
13 allege that the "Preferred Suppliers" pay Deluxe "kick-
14 backs" or "rebates" which exceed 7% of the Preferred
15 Suppliers gross sales. Id.

16 Additionally, Plaintiffs assert that Deluxe has
17 recently implemented a new policy of revenue
18 enhancement which gives Deluxe a 2% rebate from
19 Distributors when Deluxe makes payments to "Approved
20 Vendors" ("2% Net 30"), rather than "Preferred
21 Suppliers." Id. at ¶¶ 160-166. Plaintiffs allege that
22 the 2% rebate to Deluxe is unreasonable and not
23 reflected in SBS Distributors' invoices. Plaintiffs
24 argue that the rebate inflates the overall wholesale
25 prices for the SBS Distributors, thereby making sales
26 to Approved Vendors even more difficult. Id.

27 Plaintiffs further allege that Defendant Deluxe
28 used Defendant SAI to acquire non-SBS Distributor

1 businesses through the BAM Program to compete with and
2 take customers from SBS Distributors, in direct
3 violation of the alleged Customer Protection policies.
4 Id. at ¶¶ 12-16, 140-154, 156, 159, 180, 183, 187.
5 Plaintiffs allege that these acquisitions were made in
6 an effort to terminate their SBS Distributor
7 Agreements. Id. Plaintiffs further allege that
8 Defendants allow the newly acquired distributors to
9 sell products at prices below what SBS Distributors are
10 charged. Id. at ¶¶ 17, 189.

11 Next, Plaintiffs contend that Defendants will not
12 allow SBS Distributors to acquire other distributors
13 nor sell their business to another distributor without
14 executing a general release of claims against Deluxe
15 and its subsidiaries (the "General Release"). Id. at
16 ¶¶ 19-22, 220, 223. Plaintiffs allege that as a result
17 of Defendants' actions, SBS Distributors' customer
18 relationships have been harmed and Plaintiffs have
19 suffered losses of prospective contracts and
20 prospective economic advantages. Id. at ¶¶ 23, 288-
21 298, 308-314.

22 As a remedy for these alleged harms, Plaintiffs
23 seek a judicial declaration as follows: (a) The BODP
24 fees violate the SBS Distributor Agreements; (b) SBS
25 Distributors can purchase from any otherwise qualified
26 Approved Vendors and are not contractually mandated to
27 purchase from Deluxe; (c) Deluxe and SBS have no right
28 to inflate shipping and handling costs under the SBS

1 Distributor Agreements; (d) SBS Distributors are not
2 required to purchase products from Preferred Suppliers;
3 (e) SBS and Deluxe are required to enforce the Customer
4 Protection provisions of the SBS Distributor
5 Agreements; (f) SBS and Deluxe cannot require a general
6 release as a condition to the transfer of a SBS
7 Distributor franchise; (g) under the SBS Distributor
8 Agreements, Deluxe and SBS have no right to retain
9 "rebates" from the Preferred Supplier Program or demand
10 payment terms of 2% Net 30. Id. at ¶¶ 97, 108, 128,
11 152, 191, 225, 252; see also id. at ¶¶ 253-261.
12 Plaintiffs Greg Schob, Vicki Schob, and Schob and
13 Schob, Inc. ("the Schob Plaintiffs") brought a separate
14 breach of contract claim against Defendants based on
15 nearly identical grounds as those supporting
16 Plaintiffs' declaratory judgment claim.¹

17
18 ¹The Schob Plaintiffs claim SBS breached the Schobs'
19 Agreement in the following nine ways: (1) Requiring the Schobs to
20 purchase from Deluxe's Preferred Suppliers, including Deluxe
21 itself; (2) Requiring Preferred Suppliers to pay rebates or
22 "kickbacks" at the Schobs' expense; (3) Imposing 2% Net 30
23 payment terms on non-preferred Approved Vendors at the Schobs'
24 expense; (4) Charging BODP fees far in excess of actual
25 administrative costs; (5) Arbitrarily increasing shipping and
26 handling costs for its own profits; (6) Failing to take action to
27 prohibit other SBS Distributors from selling to the Schobs'
28 Protected Customers, pursuant to the alleged Customer Protection
rights in the Schob Agreement; (7) Failing to pay the Schobs all
commissions generated by sales to its Protected Customers
pursuant to the alleged Customer Protection rights; (8) Failing
to provide the Schobs with copies of all inquiries and other
correspondence related to its Protected Customers, together with
copies of SBS's reply to such inquiries or correspondence; and
(9) Failing to notify the Schobs, with reasonable promptness, of
any event that may reasonably be expected to have a material
adverse effect upon the sale of Safeguard Systems to its

1 **B. Procedural History**

2 Plaintiff USDA filed its initial Complaint on May
3 27, 2015 [1]. On July 2, 2015, USDA filed its First
4 Amended Complaint including the Schob Plaintiffs [17].
5 On July 20, 2015 Defendants filed two Motions to
6 Dismiss as to Plaintiffs USDA and the Schob Plaintiffs,
7 respectively [24, 26]. On July 28, 2015, Plaintiffs
8 submitted their respective Oppositions to Defendants'
9 Motions to Dismiss [30, 31]. On August 4, 2015,
10 Defendants submitted their Replies in support of their
11 Motions to Dismiss the First Amended Complaint [33,
12 35].

13 On November 17, 2015, this Court granted in part
14 and denied in part Defendants' Motion to Dismiss as to
15 the Schob Plaintiffs [41]. Also on November 17, 2015,
16 this Court granted in part and denied in part
17 Defendants' Motion to Dismiss as to Plaintiff USDA
18 [42]. On January 22, 2016, Plaintiff USDA and the
19 Schob Plaintiffs filed their respective Motions for
20 Reconsideration [49, 50]. On February 2, 2016
21 Defendants filed their Oppositions to Plaintiffs'
22 Motions [51, 52]. On February 9, 2016, Plaintiffs
23 filed their Replies [54, 55].

24 On February 22, this Court granted the parties'
25 Stipulation to Stay Further Proceedings Regarding the
26 Schob Plaintiffs' Claims [57]. On April 5, 2016 this
27

28 Protected Customers. FAC ¶ 265.

1 Court granted a Stipulation to Dismiss the Schob
2 Plaintiffs' claims with prejudice [60]. The Schob
3 Plaintiffs were thus dismissed from the matter, and
4 accordingly, the Schob Plaintiffs' Motion for
5 Reconsideration was terminated. USDA's Motion for
6 Reconsideration remains.

7 **II. DISCUSSION**

8 **A. Legal Standards**

9 **1. Motion for Reconsideration**

10 Local Rule 7-18 provides the basis for bringing a
11 motion for reconsideration in the Central District of
12 California. The Local Rule provides, in relevant part:
13 "[a] motion for reconsideration of the decision on any
14 motion may be made only on the grounds of (a) a
15 material difference in the fact or law form that
16 presented to the Court before such decision that in the
17 exercise of reasonable diligence could not have been
18 known to the party moving for reconsideration at the
19 time of such decision, or (b) the emergence of new
20 material facts or a change of law occurring after the
21 time of such decision, or (c) a manifest showing of a
22 failure to consider material facts presented to the
23 Court before such decision. No motion for
24 reconsideration shall in any manner repeat any oral or
25 written argument made in support of or in opposition to
26 the original motion." L.R. 7-18.

27 "Whether to grant a motion for reconsideration
28 under Local Rule 7-18 is a matter within the court's

1 discretion." Daghlian v. Devry Univ., Inc., 582
2 F.Supp.2d 1231, 1251 (C.D. Cal. Oct. 10, 2007). "A
3 motion for reconsideration should not be granted,
4 absent highly unusual circumstances." 389 Orange St.
5 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999).
6 Motions for reconsideration "are disfavored and are
7 rarely granted." Resolution Trust Corp v. Aetna
8 Casualty & Sur. Co., 873 F.Supp. 1386, 1393 (D. Ariz.
9 1994).

10 Pursuant to Federal Rule of Civil Procedure 60(a),
11 "[t]he court may correct a clerical mistake or a
12 mistake arising from oversight or omission whenever one
13 is found in a judgment, order, or other part of the
14 record." Fed. R. Civ. P. 60(a).

15 2. Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1)

16 Federal Rule of Civil Procedure 12(b)(1) authorizes
17 a court to dismiss claims over which it lacks proper
18 subject matter jurisdiction. A court is free to
19 determine jurisdiction on a motion to dismiss for lack
20 of jurisdiction under Rule 12(b)(1) "unless the
21 jurisdictional issue is inextricable from the merits of
22 a case." Kingman Reef Atoll Invs., L.L.C. v. United
23 States, 541 F.3d 1189, 1195 (9th Cir. 2008) (citing
24 Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir.
25 1987)).

26 Article III requires a case or controversy in order
27 for federal courts to have subject matter jurisdiction.
28 U.S. Const. Art. 3, § 2. The standing doctrine

1 eliminates claims that fail to create a case or
2 controversy. Summers v. Earth Island Inst., 555 U.S.
3 488, 493 (2009); Cetacean Cmty. v. Bush, 386 F.3d 1169,
4 1174 (9th Cir. 2004). A defendant may challenge a
5 plaintiff's standing in a motion to dismiss under
6 F.R.C.P. 12(b)(1) for "lack of subject-matter
7 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th
8 Cir. 2000).

9 Standing is a jurisdictional requirement that
10 precedes analysis of the merits. Krottner v. Starbucks
11 Corp., 628 F.3d 1139, 1141 (9th Cir. 2010). The party
12 seeking to invoke the jurisdiction of the federal
13 courts has the burden of alleging specific facts to
14 satisfy the three elements of constitutional standing.
15 Schmier v. U.S. Court of Appeals for the Ninth Cir.,
16 279 F.3d 817, 821 (9th Cir. 2002). The plaintiff must
17 establish (1) a legally recognized injury, (2) caused
18 by the named defendant that is (3) capable of legal or
19 equitable redress. Id. "Injury in fact," as required
20 for federal standing, is an invasion of a legally
21 protected interest which is (a) concrete and
22 particularized, and (b) actual or imminent, not
23 "conjectural" or "hypothetical," where "particularized"
24 means simply that the injury must affect the plaintiff
25 in a personal and individual way. U.S. Const. Art. 3,
26 § 2, cl. 1.

27 //

28 //

1 **B. Analysis**

2 1. The Court Lacks Subject Matter Jurisdiction
3 Over Plaintiff's Claim

4 a. *USDA Lacks Standing to Bring its Claim*

5 The standing doctrine eliminates claims that fail
6 to create a case or controversy. Summer v. Earth
7 Island Inst., 555 U.S. 488, 493 (2009); Cetacean Cmty.
8 v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (citation
9 omitted). A defendant may challenge a plaintiff's
10 standing in a motion to dismiss under Federal Rule of
11 Civil Procedure 12(b)(1) for "lack of subject-matter
12 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th
13 Cir. 2000).

14 A plaintiff has the burden of alleging specific
15 facts sufficient to establish standing. Schmier v.
16 U.S. Court of Appeals for the Ninth Cir., 279 F.3d 817,
17 821 (9th Cir. 2002). The Plaintiff bears the burden of
18 establishing standing at each and every stage of the
19 litigation. Krottner, 628 F.3d at 1141. Additionally,
20 a plaintiff is required to establish "'standing for
21 each claim he seeks to press' and 'for each form of
22 relief that is sought.'" Davis v. Fed. Elec. Comm'n,
23 554 U.S. 724, 734 (2008). This analysis requires
24 "careful judicial examination of a complaint's
25 allegations." Allen v. Wright, 468 U.S. 737, 752
26 (1984).

27 //

28 //

i. *Plaintiff no longer has standing as a co-party of the Schob Plaintiffs.*

This Court finds, as it did in its November 17 Order [41], that Plaintiff lacks standing to bring its declaratory judgment claim. In its original Opposition [30] to Defendants' Motion to Dismiss, Plaintiff argues that it need not have independent standing to pursue its claim because the Schob Plaintiffs had standing to pursue their claims. Opp'n 3:12-4:2, ECF No. 30.

Plaintiff is correct in asserting that if "the Court finds one of the named plaintiffs has standing to pursue all of the asserted claims, it need not find that the other plaintiffs also have standing for those plaintiffs to remain in the suit." Opp'n 3:14-17, ECF No. 30 (citing Public Citizen, Inc. v. Miller, 992 F.2d 1548 (11th Cir. 1993)). However, the Schob Plaintiffs have since settled and dismissed all of their claims against Defendants in this matter, and are no longer parties to this action [60]. Consequently, Plaintiff can no longer establish standing through the Schob Plaintiffs to bring its declaratory judgment claim against Defendants. Rather, in order to proceed with its declaratory judgment claim, Plaintiff must sufficiently show that it has associational standing. This Court finds Plaintiff has not met its burden, in either its prior filings or the present Motion, to proffer specific facts to establish standing.

//

1 ii. *Plaintiff does not meet its burden to*
2 *allege specific facts establishing*
3 *associational standing.*

4 Associational standing is a narrow and limited
5 exception to the general rule that litigants must
6 assert their own rights in order to have standing.
7 Black Faculty Ass'n of Mesa Coll. v. San Diego Cmty.
8 Coll. Dist., 664 F.2d 1153, 1156 (9th Cir. 1981). In
9 order for an association to have standing, (1) its
10 members must otherwise have standing to sue in their
11 own right, (2) the interests the association seeks to
12 protect are germane to its purpose, and (3) neither the
13 claim asserted nor the relief requested require the
14 participation of individual members in the lawsuit.
15 Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333,
16 343 (1977). A plaintiff must establish that it has
17 satisfied *each* of the elements of standing and mere
18 "labels and conclusions" are insufficient. Bell Atl.
19 Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007).

20 Plaintiff's sole claim in this matter, for
21 declaratory judgment, asks the Court to declare the
22 respective rights and duties of all individual members
23 of Plaintiff USDA under the SBS Distributor Agreements.²

25 ²Specifically, Plaintiff seeks a judicial declaration
26 regarding the following: "(a) Whether under the SBS Distributor
27 Agreement, SBS can require the SBS Distributors to purchase from
28 Deluxe's Preferred Suppliers, including Deluxe itself; (b)
 Whether under the SBS Distributor Agreement, SBS can require
 Preferred Suppliers to pay rebates or "kickbacks" at the expense
 of the SBS Distributors; (c) Whether under the SBS Distributor

1 See FAC ¶ 255. First and foremost, "SBS Distributor
2 Agreements" is a broad label that Plaintiffs use to
3 describe various contracts between SBS Distributors and
4 SBS, all of which are individualized and signed by the
5 specific Distributors to whom they apply. As is
6 evident in comparison of the Schob Plaintiffs'
7 Agreement with SBS [17-1] and another SBS Distributor
8 Agreement between Distributor Stephen D. Venture and
9 SBS ("Venture Agreement"), not all SBS Distributor
10 Agreements are identical. Compare FAC Ex. A, ECF No.
11 17-1, with FAC Ex. E, ECF No. 17-1. In fact, SBS
12 Distributor Agreements contain differing addendums and
13 amendments that affect the rights and the duties of
14 those signatories / distributors regarding their
15 contract with SBS. For this initial reason, it is
16 clear to this Court that the participation of the
17 Distributors is required to resolve the disputes at
18 issue in Plaintiff's declaratory judgment claim.

19 Further, Plaintiff cannot establish associational
20 standing because its declaratory judgment claim

21
22 Agreement, SBS can impose 2% Net 30 payment terms on
23 non-preferred Approved Vendors at the expense of the
24 SBS Distributors; (d) Whether under the SBS Distributor
25 Agreement, the BODP fees charged by SBS violate the SBS
26 Distributors Agreements; (e) Whether under the SBS Distributor
27 Agreement, SBS can arbitrarily increase shipping and handling
28 costs for its own profits unrelated to the expenses of shipping
and handling; (f) Whether the BAM program, as implemented,
violates the SBS Distributors' rights to Customer Protection; and
(g) Whether under the SBS Distributor Agreement, SBS may require
a general release from the purchasing SBS Distributor as a
condition of transferring another SBS Distributor's Agreement."
FAC ¶ 255, ECF No. 17.

1 requires fact-specific inquiries, which the Supreme
2 Court has held cannot support an establishment of
3 associational standing.³ In fact, associational
4 standing is not established unless "*neither the claim*
5 *asserted* nor the relief requested requires the
6 participation of individual members in the lawsuit."
7 Hunt, 432 U.S. at 343 (emphasis in original); see, e.g.
8 Rent Stabilization Association v. Dinkins, 5 F.3d 591
9 (2d Cir. 1993). The Ninth Circuit has only permitted
10 associational standing where an association seeks
11 declaratory relief in cases that involve pure questions
12 of law. See, e.g., Columbia Basin Apt. Ass'n v. City
13 of Pasco, 268 F.3d 791, 799 (9th Cir. 2001) (addressing
14 the constitutionality of a city ordinance); Associated
15 Gen. Contractors of Am. v. Metro. Water Dist. of S.
16 Cal., 159 F.3d 1178, 1181 (9th Cir. 1998) (same);
17 Associated Gen. Contractors of Cal., Inc. v. Coal. for
18 Econ. Equity, 950 F.2d 1401, 1408 (9th Cir. 1991)
19 (seeking to enjoin enforcement of city ordinance). In
20 cases where an association's declaratory relief claim
21 involves more than just pure legal issues, requiring
22 factual inquiry, the Ninth Circuit has held that the

24 ³In International Union, United Automotive, Aerospace &
25 Agricultural Implement Workers of America v. Brock, the Supreme
26 Court clarified that the application of the third Hunt
27 requirement necessarily precluded associational standing unless
28 the association's claim raises a pure question of law. 477 U.S.
274, 287 (1986). The Court reasoned that where a complaint
raises anything other than a pure legal question, the issues
implicated individualized factual inquiries that Hunt prohibits.
Id.

1 association lacked standing. See, e.g., Spinedex
2 Physical Therapy USA Inc. V. United Healthcare of
3 Arizona, Inc., 770 F.3d 1282, 1292 (9th Cir. 2014)
4 (finding that the association lacks standing because
5 the participation of the beneficiaries of a healthcare
6 plan was required).

7 The Court finds the present case is similar to
8 Spinedex in that the declaratory relief sought by the
9 Spinedex plaintiffs required the court to consider the
10 "individual situations of ACS members." Id. at 1293.
11 The Ninth Circuit reasoned: "Because of [the] multiple
12 variations, specific to individual members of ACS, we
13 conclude that the violations of which ACS complains are
14 not susceptible to judicial treatment as 'systematic
15 policy violations that . . . make extensive individual
16 participation necessary,'" and thus plaintiffs did not
17 establish associational standing. Id. at 1292.

18 Similarly, in the present case (as we have seen in
19 comparison of the Schobs' Agreement with the Venture
20 Agreement above), each SBS Distributor Agreement
21 contains amendments and addendums producing multiple
22 variations specific to the individual Distributors.
23 This makes judicial determination of Plaintiffs'
24 declaratory relief claim on the Distributors' behalf
25 inappropriate and unwarranted. The Schob Plaintiffs'
26 claims may not be common to the entire association
27 membership, and in any event, this Court finds
28 Plaintiff did not meet its burden in establishing as

1 such with factual specificity. Associational standing
2 has not been established. The Court will not intervene
3 at this juncture to declare the rights of all
4 Plaintiff's members as they arise from differing,
5 independent contracts.

6 iii. *Plaintiff has not shown sufficient*
7 *immediacy to establish an "injury-*
8 *in-fact."*

9 Finally, this Court finds Plaintiff has not met its
10 burden to establish immediacy. Specifically, Plaintiff
11 has not shown it suffered an "injury-in-fact" that is
12 imminent. To plausibly allege an "injury-in-fact"
13 establishing Article III standing, a plaintiff must
14 proffer specific facts showing "a credible threat of
15 harm," and that the harm is "both real and immediate,
16 not conjectural or hypothetical." Krottner, 628 F.3d
17 at 1143 (internal citations omitted). It is
18 Plaintiff's burden to allege specific facts
19 establishing standing at each and every stage of the
20 litigation. Id. at 1141.

21 As discussed in this Court's previous Order
22 addressing Plaintiffs' declaratory judgment claim [41],
23 "Plaintiffs have not alleged any facts showing that
24 Plaintiffs require the immediacy of a judicial
25 declaration. Plaintiffs appear to seek judicial
26 declaration not as a preventative measure, but as a
27 remedial measure to address previously alleged breach
28 of contract claims." Order dated 11/17/15, 55:24-56:1.

1 Although Plaintiffs were made aware of the
2 deficiency in their declaratory judgment claim in this
3 Court's prior Order [41], which Plaintiff concedes in
4 the present Motion for Reconsideration, see Mot. for
5 Reconsideration 9:15-10:4, ECF No. 49, Plaintiff
6 nonetheless proffers no additional facts in support of
7 its contention that it will imminently suffer an injury
8 to warrant standing. Furthermore, Plaintiff makes no
9 showing of how it would remedy the deficiency in its
10 Reply. For this additional reason, the Court finds
11 that Plaintiff lacks standing to bring its declaratory
12 judgment claim. Accordingly, this Court lacks subject
13 matter jurisdiction over Plaintiff's claim. The Court
14 **DENIES** Defendant's Motion for Reconsideration [49] for
15 this additional reason.

16 2. Declaratory Relief under Rule 57 is not
17 Warranted.

18 Federal Rules of Civil Procedure Rule 57 "govern[s]
19 the procedure for obtaining a declaratory judgment
20 under 28 U.S.C. §§ 2201." Fed. R. Civ. P. 57. "When
21 declaratory relief will not be effective in settling
22 the controversy, the court may decline to grant it."
23 Id.; McGraw-Edison Co. v. Preformed Line Products Co.,
24 362 F.2d 339 (9th Cir. 1966). "A declaratory judgment
25 is appropriate when it will 'terminate the controversy'
26 giving rise to the proceeding. Inasmuch as it often
27 involves only an issue of law on undisputed or
28 relatively undisputed facts, it operates frequently as

1 a summary proceeding, justifying docketing the case for
2 early hearing as on a motion." Fed R. Civ. P. 57,
3 "Notes of Advisory Committee on Rules."

4 In the present case, this Court finds that granting
5 Plaintiff's declaratory judgment claim against
6 Defendants would not "terminate the controversy" that
7 gave rise to this matter. This is evident by the Schob
8 Plaintiffs' participation in this matter, and by the
9 fact that "[Plaintiff's] Counsel is concurrently
10 representing other Safeguard [D]istributors under the
11 same legal theories as set forth in this action in both
12 a state court proceeding (filed August 26, 2014) and a
13 separate arbitration (Demand served February 19, 2015)
14 in Idaho." See Declaration of Wesley W. Lew ¶ 19, ECF
15 No. 53. In these proceedings, SBS Distributors are
16 pursuing alleged individualized harm arising out of
17 their specific SBS Distributor Agreements.

18 Furthermore, the present matter does not simply
19 "involve[] only an issue of law on undisputed or
20 relatively undisputed facts," but rather requires
21 extensive factual determinations. Fed R. Civ. P. 57,
22 "Notes of Advisory Committee on Rules." It is not
23 apparent to this Court that the judicial declaration
24 sought by Plaintiff would terminate the controversy at
25 hand.

26 3. USDA should not be afforded leave to amend

27 "A district court need not grant leave to amend
28 where the amendment: (1) prejudices the opposing party;

(2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile." AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9th Cir. 2006). "[L]eave to amend is addressed to the sound discretion of the court, and must be decided upon the facts and circumstances of each particular case." Caddy-Imler Creations, Inc. v. Caddy, 399 F.2d 79, 84 (9th Cir. 1962).

While Plaintiff is correct in asserting that the Court's stated basis for dismissing its claim in its previous Order [42] was in error, additional grounds exist upon which this Court must dismiss Plaintiff's claim. Specifically, Plaintiff has not shown imminence of an "injury-in-fact," and thus it lacks standing to bring its claim. See Order dated 11/17/15, 55:24-56:1.

Plaintiff has already been given leave to amend this claim, see Order dated 07/1/15, ECF No. 16, and as such this Court finds further leave to amend would produce an undue delay in litigation. Additionally, as Plaintiff has previously been made aware of the deficiencies of its declaratory judgment claim, the Court finds Plaintiff's failure to remedy these deficiencies indicates that further leave to amend would be futile.⁴ Further, Defendants have proffered

⁴Plaintiff argues that any defect in the First Amended Complaint "can easily be cured" by amendment. See Mot. 9:23-10:4. However, despite the fact that this Court pointed out specific deficiencies in its previous Order [41], Plaintiff's present Motion fails to provide any further factual support for its contention that it could cure its declaratory claim through a

evidence of the prejudice they would suffer if this case were reopened to allow Plaintiff to attempt for a third time to remedy their claim. See Opp'n 17:10-18:2, ECF No. 52.

Upon review of the parties' filings and upon consideration of the repeated deficiencies of Plaintiff's declaratory judgment claim, this Court declines to give Plaintiffs further leave to amend their claim. In doing so, this Court avoids further undue delay to this litigation and further prejudice to Defendants. See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

The Clerk shall close this action. All pending dates on the Court's calendar are VACATED.

IT IS SO ORDERED.

DATED: May 17, 2016

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

third opportunity to amend its Complaint. Id. Rather, Plaintiff simply argues that "in its Order addressing the Defendants' motion to dismiss the Schob Plaintiffs' claims, the Court found that the Schob Plaintiffs failed to plead the 'sufficient immediacy' element of their judicial declaration claim. Should the Court now find that the USDA's pleading is equally lacking, the USDA would be able to correct the deficiency by alleging a myriad of facts" to show that Plaintiff requires immediate relief. Id. Plaintiff states in a conclusory fashion, "[b]ecause Defendants continue to enforce the above-stated policies and programs the immediacy element of a declaratory judgment claims has been (and, if necessary, can be) satisfied." Id. at 11:21-12:1.